

AZNAR BROTHERS REALTY COMPANY, PETITIONER, VS. HEIRS OF ANICETO AUGUSTO & PETRONA CALIPAN, NAMELY: TEODORICA ANDALES GERONIMO AUGUSTO (DECEASED) REPRESENTED BY: NICOMEDES AUGUST...

G.R. No. 140417. May 28, 2004

Ponente: CORONA, J.

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CORONA, J.:

This is a petition to review the decision[1] of the Court of Appeals in CA-GR CV No. 51279 reversing the decision[2] of Branch 27 of the Regional Trial Court (RTC) of Lapu-Lapu City. The CA ruled that the claim of herein respondent Heirs of Aniceto Augusto (Heirs) had not yet prescribed. The dispositive portion[3] read:

WHEREFORE, the appealed Order is hereby REVERSED and SET ASIDE. The complaint is reinstated to the docket of Branch 27 of the Regional Trial Court of Lapu-Lapu City to which the records of the case is (sic) ORDERED REMANDED for appropriate action in line with the disposition of this case.

SO ORDERED.

The facts of the case follow.

The subject matter of this controversy is Lot No. 4397, Opon Cadastre, covered by Decree No. 531070 and situated in Dapdap, Mactan, Lapu-Lapu City, Cebu. It was owned by Aniceto Augusto who was married to Petrona Calipan. When Aniceto died on December 3, 1934, he left behind five children: Geronimo, Zacarias, Teoderica, Arsenia and Irene. Apparently, the property remained undivided as evidenced by Tax Declaration No. 02679[4] issued to Petrona Calipan in 1945.

Sometime in 1962, Tax Declaration No. 02679 in the name of Calipan was cancelled pursuant to an “Extrajudicial Partition”[5] executed before Notary Public Vicente Fanilag. In lieu thereof, tax declaration certificates covering Lot No. 4397 were issued to the following: Filomeno Augusto, Ciriaco Icoy, Felipe Aying, Zacarias Augusto, Abdon Augusto, Teoderica Augusto, Pedro Tampus and Anacleto Augusto.

On February 13, 1962, these persons sold the property to petitioner Aznar Brothers Realty Company (Aznar Realty) through a Deed of Sale of Unregistered Land which was registered on the same date with the Register of Deeds of Lapu-Lapu City.

On September 6, 1962, Carlos Augusto, claiming to be an heir of “his father Aniceto” (when in fact he was the son of Zacarias and as such was in reality a grandson of Aniceto), filed a Petition for the Reconstitution of Title. He alleged that the original copy and duplicate owner’s copy of the title of the property sold to respondent Aznar were lost during the war.

On February 28, 1963, an “Affidavit of Declaration of Heirs of Aniceto Augusto” was executed wherein Zacarias, Teoderica, Arsenia and Irene (Geronimo having died in December 1961) declared that, at the time of their

father's death, he had five legitimate children and that he left behind 15 parcels of land covered by various tax declarations. The affidavit was signed by Zacarias and thumbmarked by Teoderica, Arsenia and Irene, with Carlos Augusto and Filomeno Augusto as witnesses.

On April 15, 1963, TCT No. 0070 covering the property was issued to petitioner Aznar Realty, which then secured Tax Declaration No. 01937.

On July 28, 1992, respondent Heirs filed Civil Case No. 2666-L against petitioner Aznar Realty, and Carlos and Filomeno Augusto in the RTC of Lapu-Lapu City, Branch 27, for (1) recovery of Lot No. 4397; (2) the declaration of the Deed of Sale dated February 13, 1962 as null and void; (3) the recognition of the Heirs; (4) the cancellation of the TCT issued to petitioner Aznar Realty and (5) the issuance of a restraining order and/or writ of preliminary injunction.

Only petitioner Aznar Realty filed an answer interposing the defense of lack of cause of action and prescription. It asked for a preliminary hearing on the affirmative defenses as if a motion to dismiss had been filed. This was granted by the trial court.

After the hearing on the affirmative defenses, the trial court ruled that the claim of respondent Heirs was already barred by prescription:

On the basis of the foregoing facts and circumstances established by evidence, this Court believes that the action of the plaintiffs is undisputably barred by prescription. Principally, plaintiffs' action is for recovery of a parcel of land. This type of action prescribes after ten (10) years from the date of registration or from discovery of the fraud. As held in the case of *Cañete vs. Benedicto*, 158 SCRA 575, "an action for recovery of title or possession of real property or an interest therein can only be brought within 10 years after the cause of action accrues which is deemed to have taken place from the registration of the document with the Register of Deeds for registration constitutes a constructive notice to the whole world" (*Gerona vs. de Guzman*, 11 SCRA 153). In the case of *Gicano vs. Gegato*, 157 SCRA 140, the Supreme Court ruled that "action to recover property which was filed only 23 years from the issuance of the title to the property on the supposedly fraudulent sale, has been extinguished by prescription." Moreover, in *Casipit vs. Court of Appeals*, 204 SCRA 648, the Supreme Court held that "the prescriptive period for the reconveyance of fraudulently registered real property is ten (10) years reckoned from the date of issuance of the certificate of title."

The Deed of Sale of Unregistered Land dated February 13, 1962 was registered on the same date at the Register of Deeds of Lapu-Lapu City as appearing at the back page thereof. Since that time up to the filing of this case on July 28, 1992, thirty (30) years had elapsed. And since the issuance of Transfer Certificate of Title No. 0070 in the name of Aznar Brothers Realty Co. on April 15, 1963 up to the institution of this action, twenty-nine (29) years had elapsed. The Court therefore believes there is no more way by which plaintiffs' action can rise from its extinct state.

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WHEREFORE, finding merit in defendants' affirmative defense of prescription, this case is, as it is hereby ordered DISMISSED. [6]

Respondents appealed the dismissal order to the Court of Appeals which overturned the decision and remanded the case to the court a quo. Citing the case of *Castillo vs. Heirs of Madrigal*, [7] the Court of Appeals found that the claim had not yet prescribed since the action of respondents was for the declaration of nullity of the Deed of Sale on the ground of absence of consent. Such action was imprescriptible. As held by the appellate court:

In *Castillo v. Heirs of Madrigal* [198 SCRA 556], the Supreme Court held that an action for the declaration of the inexistence of a deed of sale is imprescriptible because of the absence of the vendors' consent following Article 1410 of the Civil Code which provides:

The action or defense for the declaration of the inexistence of a contract does not prescribe.

as was an action for reconveyance based on a void document where the property has not yet passed to an innocent purchaser for value, it citing *Armamento v. Guerrero*, 96 SCRA 178; *Baranda, et al. v. Baranda, et al.*, 150 SCRA 59, 1987. In sustaining the dismissal of the complaint in the case, the High Court declared that although the action for annulment of the document and the transfer of title was imprescriptible, the complaint was dismissable for failure to state a cause of action, the property having been sold by the therein defendant vendee to its co-defendant subsequent vendee who was not alleged in the complaint to be a purchaser in bad faith.

The present case is for annulment of the deed of sale and the transfer certificate of title issued as a result thereof, and for reconveyance. The complaint alleges that the heirs-owners of the questioned lot never sold it to Aznar Realty which conspired with its co-defendants in the fraudulent transfer thereof.

The court a quo thus erred in dismissing the complaint at bar on the ground of prescription.[8]

Thus, this petition for review on the following assignments of error:[9]

I

THE COURT OF APPEALS ERRED IN REVERSING THE ORDER DATED OCTOBER 18, 1993 OF THE REGIONAL TRIAL COURT OF CEBU, BRANCH 27, LAPU-LAPU CITY

II

THE COURT OF APPEALS ERRED IN HOLDING THAT THE ACTION OF THE RESPONDENTS (PLAINTIFFS IN CIVIL CASE NO. 2666-L) IS IMPRESCRIPTIBLE; and

III

THE COURT OF APPEALS ERRED IN FAILING TO CONSIDER THAT THE ACTION OF RESPONDENTS (PLAINTIFFS IN CIVIL CASE NO. 2666-L) IS BARRED BY PRESCRIPTION AND LACHES.

The petition is without merit. The respondents' claim is imprescriptible and not barred by laches.

Respondents anchored their action for reconveyance in the trial court on the nullity of the Deed of Sale between petitioner Aznar and the supposed owners of the property. Respondents impugned the validity of the document because the sellers were not the true owners of the land and, even if one of the real owners (Teoderica Augusto Andales) thumbmarked the document, she was unaware that she was selling the land. Paragraphs 5, 9 and 10 of respondents' complaint[10] filed with the trial court read:

5. That some on September 6, 1962, Aznar Brothers Realty Co. through its lawyer, Atty. Ramon Igana and Carlos Augusto, one of the defendants, connived and confederated with one another in filing a petition for reconstitution of title of the land of the deceased spouses Aniceto Augusto and Petrona Calipan (Talipan) on September 6, 1962 with the Court of First Instance of Cebu, 4th Judicial District. In such petition Carlos Augusto claimed that he is one of the owners of Lot No. 4397 Opon Cadastre, having inherited the same from his father, the deceased Aniceto Augusto (see paragraph 2 of the Petition for Reconstitution of Title as stated in the verified xerox copy of the original petition, marked as Annex "B") when in fact and in truth he is the son of Zacarias Augusto, the son of Aniceto Augusto, true owner of lot no. 4397;

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9. That Teoderica Augusto Andales, the only survivor of the five legal and legitimate children of deceased Aniceto Augusto and Petrona Calipan (Talipan), and Ciriaco Icoy, whose names were used as vendors by the above defendants, denied that they sold to Aznar Brothers Realty Co. particularly the land described on the Tax Declaration Nos. 19281, 19280, 1986 and 19285 as alleged in the Deed of Sale of Unregistered Land (affidavits are hereto attached, marked as Annexes "G" and "H"), duly notarized by Atty. Maximo S. Ylaya

with Doc. No. 395; Page No. 19; Book No. V; Series of 1962. the original copy of which cannot be found (attached is a certification from the records management of Archives office, marked as Annex “I”);

10. That on February 28, 1963, an affidavit of Declaration of Hrs. of Aniceto Augusto was allegedly executed and witnessed by Carlos Augusto and Felomino Augusto declaring that deceased Aniceto Augusto at the time of his death (incidentally Aniceto Augusto died in 1933) left properties consisting of fifteen (15) parcels of land distributed to the different persons who are strangers to the family of Sps. Aniceto Augusto and Petrona Calipan (Talipan) and therefore have no rights over the property of the deceased Aniceto Augusto and Petrona Calipan (Talipan) – the Tax Declarations were obviously procured with the appearance that said parcel of lands are distributed accordingly; that said affidavit of Declaration of Hrs. of Aniceto Augusto was formulated after the Deed of Sale was executed (attached is an affidavit of Declaration of Hrs. of Aniceto Augusto, marked as Annex “J”).

Respondents sought the declaration of nullity (inexistence) of the Deed of Sale because of the absence of their consent as the true and lawful owners of the land. They argued that the sale to petitioner Aznar was void since the purported “owners” who signed the Deed of Sale as vendors were not even heirs of Aniceto Augusto and Petrona Calipan. They pointed out that the 1945 Tax Declaration in the name of Petrona Calipan indicated that the property was undivided as of the time Aniceto Augusto died in 1932. The land area appearing in said declaration was 5.7 hectares and this fact belied the February 28, 1963 affidavit of Zacarias et al. that, at the time of Aniceto’s death, he left behind 15 parcels of land to persons who were not even his compulsory heirs. The “owners” who sold the land to petitioner Aznar Realty could not have been the true owners of the land since there was no showing how they acquired the land in the first place. Thus, the trial court should not have dismissed the complaint without looking into the validity of the sale of land to petitioner Aznar Realty.

In *Heirs of Romana Injug-Tiro vs. Casals*,^[11] a case very similar to this, we said that:

A cursory reading of the complaint, however, reveals that the action filed by petitioners was for partition, recovery of ownership and possession, declaration of nullity of a deed of sale of unregistered land and extrajudicial settlement and confirmation of sale. Petitioners’ causes of action are premised on their claim that: (a) the Deed of Sale of Unregistered Land is void and of no effect since their respective shares in the inheritance were included in the sale without their knowledge and consent, and one of the vendor-signatories therein, Eufemio Injug (Eufemio Tiro, husband of Romana Injug), was not even a direct and compulsory heir of the decedent; and (b) the Extrajudicial Settlement and Confirmation of Sale is simulated and therefore null and void ab initio, as it was purportedly executed in 1967 by, among others, Eufemio Tiro who was not an heir, and by Francisco Injug who died in 1963. Also the prayer in the same complaint expressly asks that all those transactions be declared null and void. In other words, it is the nullity of the deeds of sale and the extrajudicial settlement and confirmation of the sale which is the basic hypothesis upon which the instant civil action rests. Thus, it appears that we are dealing here not with simple voidable contracts tainted with fraud, but with contracts that are altogether null and void ab initio. (emphasis ours)

Neither is respondents’ claim barred by laches. In the same case of *Injug-Tiro*,^[12] we ruled that:

In actions for reconveyance of property predicated on the fact that the conveyance complained of was null and void ab initio, a claim of prescription of action would be unavailing. The action or defense for the declaration of the inexistence of a contract does not prescribe. Neither could laches be invoked in the case at bar. Laches is a doctrine in equity and our courts are basically courts of law and not courts of equity. Equity, which has been aptly described as “justice outside legality,” should be applied only in the absence of, and never against, statutory law. *Aequetas nunquam contravenit legis*. The positive mandate of Art. 1410 of the New Civil Code conferring imprescriptibility to actions for declaration of the inexistence of a contract should pre-empt and prevail over all abstract arguments based only on equity. Certainly, laches cannot be set up to resist the enforcement of an imprescriptible legal right, and petitioners can validly vindicate their inheritance despite the

lapse of time.

Consequently, respondent Heirs could not have been guilty of laches. It was only in 1991 when they were evicted that they discovered their land had been sold to Aznar Realty. From the testimony of respondent Heirs, it was apparent that all matters relating to the land had been entrusted to Carlos Auguston by the Heirs, most of whom were unschooled farmers who did not know how to read and write. They never expected him to dupe them of their inheritance. They had no reason to suspect that he had sold the land since they remained in possession thereof until they were ejected in 1991 by petitioner Aznar Realty.

Respondents were evicted from their land in November 1991 and they filed their complaint with the trial court on July 28, 1992. Only eight months had passed from the time they were ejected to the time they asserted their rights over their property. They certainly could not be deemed to have slept on their rights.

Petitioner makes much of the fact that respondents brought suit only after the property had already been developed into an upscale subdivision. Petitioner would have this Court believe that respondents were merely “out to make an easy profit at [its] expense.” This is the exact opposite of the Court’s impression of respondent Heirs. On the contrary, if the Court were to fault respondents, it would be for being too trusting of their kin Carlos Augusto and certainly not for being opportunistic.

Thus, the Court of Appeals did not err in setting aside the decision of the trial court and ordering that the case be remanded for trial. Respondents ask this Court to rule on the merits of the case and not to send it back to the trial court. Respondents herein are destitute farmers who do not have the resources to vindicate their rights to their inheritance in a long, protracted trial. The Court commiserates with them but it has no choice but to remand the case to the court a quo to enable both parties to ventilate their claims in a full-blown trial.

To facilitate the resolution of the case, however, the trial court should take note of the facts duly established during the hearing on the issue of prescription, as affirmed by the Court of Appeals and this Court.

WHEREFORE, the petition is hereby DENIED. The decision of the Court of Appeals in CA-G.R. CV No. 52179 is AFFIRMED.

SO ORDERED.

Vitug, (Chairman and Acting C.J.), and Sandoval-Gutierrez, JJ., concur.
Carpio-Morales, J., no part, participated in the case before the Court of Appeals.

[1] Penned by Associate Justice Conchita Carpio Morales (now Associate Justice of the Supreme Court) and concurred in by Associate Justices Jinal D. Rasul and Bernardo P. Abesamis of the Sixth Division.

[2] Penned by Judge Teodoro K. Risos

[3] Rollo, p. 42.

[4] “Exhibit E;” Records, p. 14.

[5] Document No. 135, Page 146, Book No. III, series of 1961.

[6] Rollo, p. 34.

[7] 198 SCRA 556 [1991].

[8] Rollo, pp. 41-42.

[9] Rollo, p. 182.

[10] Rollo, pp. 141-142.

[11] 363 SCRA 435, 400-441 [2001].

[12] Ibid at 442-443.

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